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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

**JOINT STATEMENT RE: PRIVILEGE
LOG AND PRIVILEGE DISPUTES
(DKT. 380)**

Date: December 14, 2020

Time: N/A

Place: Courtroom 8

Judge: Hon. Lucy H. Koh

Pursuant to the Court's Order on December 13, 2020 (Dkt. 380), the parties to this action, by their respective counsel, respectfully submit the following Joint Statement regarding an expedited schedule to produce a privilege log and to brief privilege disputes.

I. BACKGROUND

On December 13, 2020, the Court entered an Amended Order Denying Motion for Reconsideration and Clarifying Order to Compel ("December 13 Order") (Dkt. 380). In the December 13 Order, the Court ordered the parties, by December 14, 2020 to (1) meet and confer, and (2) file a joint statement proposing an expedited schedule to produce a privilege log and to brief privilege disputes. December 13 Order at 9. The Court ordered the parties to prioritize high priority objections first; ordered that the parties must meet and confer before briefing any privilege disputes; and ordered that the same three-judge panel of United States Magistrate Judges that previously ruled on the parties' privilege disputes rule on these privilege disputes *in camera*. *Id.*

Pursuant to the December 13 Order, Plaintiffs and Defendants met and conferred regarding an expedited schedule to produce a privilege log and to brief privilege disputes on December 14, 2020. Plaintiffs and Defendants were able to agree on an expedited schedule to produce a privilege log and to brief privilege disputes. Accordingly, the parties present their proposed schedule for ongoing production of privilege logs and briefing of privilege disputes below.

II. DOCUMENT PRODUCTION, PRIVILEGE LOGS, AND PRIVILEGE DISPUTES

At the outset, the parties note that the Court previously provided guidance regarding handling privilege disputes in several orders on the privilege dispute process, including its Order to Produce Inspector General Document Production (Dkt. 132), Order Re: Privilege Disputes (Dkt. 140), and Order on Procedures for In Camera Privilege Review by Magistrate Judges ("Order Re: Privilege Review") (Dkt. 163). The jointly proposed schedule and procedures regarding Defendants' production of privilege logs and rolling resolution privilege disputes are consistent with the Court's prior orders regarding privilege disputes. In particular, the proposed

1 schedule attempts to mirror the Court's Order Re: Privilege Review, particularly in light of the
2 expedited discovery period in this case.

3 Given the expedited nature of the discovery period, and consistent with the Court's Order
4 Re: Privilege Review and December 13 Order, the parties propose the following schedule and
5 deadlines:

- 6 • **December 14, 2020:** Defendants provide their first privilege log, accompanying their
7 production of over 60,000 documents.
- 8 • **December 17, 2020 by 7:00 p.m. Pacific Standard Time:** Defendants (1) provide
9 Plaintiffs with a production of documents, and (2) produce a privilege log including any
10 additional documents Defendants reviewed and withheld up to the time of their
11 production on December 17, at 7:00 p.m.; the privilege log will include the basis on
12 which each document was withheld, providing a log similar to that which Defendants
13 provided in their privilege review at Dkt. 154-2.
- 14 • **December 18, 2020 by 7:00 p.m. Pacific Standard Time:** The parties meet and confer
15 within 24 hours of Defendants' privilege log production, regarding any privilege
16 dispute(s). No less than three hours prior to the meet and confer, Plaintiffs will provide
17 Defendants a list of the challenged withheld documents in Defendants' privilege log.
- 18 • **December 19, 2020 by 10:00 a.m. Pacific Standard Time:** Defendants will state
19 whether they will change any of the privilege designations on any of the challenged
20 documents.
- 21 • **December 20, 2020 on or before 5:00 p.m. Pacific Standard Time:** The parties will
22 file simultaneous briefing on any privilege dispute(s) they cannot resolve, with the
23 underlying documents for *in camera* review by the Magistrate Judges. Plaintiffs will
24 demarcate their high-priority objections.
- 25 • **December 21, 2020 on or before 7:00 p.m. Pacific Standard Time:** Defendants (1)
26 produce all remaining documents not already produced in earlier productions; and (2)
27 produce a privilege log including any additional documents Defendants reviewed and
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withheld up to the time of this final production; the privilege log should include the basis on which each document was withheld, providing a log similar to that which Defendants provided in their privilege review at Dkt. 154-2.

- **December 22, 2020 by 7:00 p.m. Pacific Standard Time:** The parties meet and confer within 24 hours of Defendants' privilege log production, regarding any privilege dispute(s). No less than three hours prior to the meet and confer, Plaintiffs will provide Defendants a list of the challenged withheld documents in Defendants' privilege log.
- **December 23, 2020 by 10:00 a.m. Pacific Standard Time:** Defendants will state whether they will change any of the privilege designations on any of the challenged documents.
- **December 23, 2020 on or before 5:00 p.m. Pacific Standard Time:** The parties will file simultaneous briefing on any privilege dispute(s) they cannot resolve, along with the underlying documents for *in camera* review by the Magistrate Judges. Plaintiffs will demarcate their high-priority objections.
- **Production of Documents:** If the Magistrate Judges determine that any documents withheld by Defendants are not, in fact, privileged, Defendants will have 48 hours to produce the documents at issue or to file objections with the District Judge. If Defendants file timely objections with the District Judge, the Magistrate Judges' ruling will be stayed until the District Judge rules on the objections. If the District Judge affirms the determination of the Magistrate Judges' ruling that the documents are not privileged, Defendants must produce the documents at issue by 11:59 p.m. Eastern Standard Time the day of that adverse determination, or within 12 hours of that adverse determination, whichever is later.

To the extent Defendants produce additional privilege logs in this matter, privilege disputes will follow a commensurate timeline of events as laid out above, with the simultaneous briefing occurring on 5:00 p.m. Pacific Standard Time on the same day Defendants state whether they will change any designations.

1 Defendants further propose that rulings by the Magistrate Judges on each submission of
2 privilege disputes be made in the form of one or two decisions so as to enable orderly
3 compliance. In light of the arduous process required for Defendants to finalize productions, *see*
4 ECF No. 376-1 at ¶ 8, it would be extraordinary difficult for Defendants to produce documents in
5 response to multiple adverse orders in quick succession.
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21 **ATTESTATION**

22 I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this
23 document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred
24 in this filing.

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